

STATE OF MICHIGAN
COURT OF APPEALS

TRI-COUNTY INTERNATIONAL TRUCKS,
INC., and IDEALEASE OF FLINT,

UNPUBLISHED
October 25, 2005

Plaintiffs-Appellants,

v

HILLS' PET NUTRITION, INC.,

No. 255695
Lenawee Circuit Court
LC No. 02-000986-CK

Defendant-Appellee.

Before: Cavanagh, P.J., and Smolenski and Zahra, JJ.

ZAHRA, J., (*concurring in part and dissenting in part*).

I concur in the majority's conclusion that, pursuant to a 1992 vehicle lease and service agreement executed between the litigants ("national agreement"), defendant was under a duty to indemnify and provide insurance coverage to Idealease of Flint. I also concur in the majority's conclusion that under the national agreement defendant was not obligated to provide insurance coverage to Tri-County International Trucks, Inc., ("Tri-County"). I respectfully dissent from the majority's conclusion that, pursuant to the national agreement, defendant was under a duty to indemnify Tri-County. I would affirm the trial court's grant of summary disposition in favor of defendant on all claims asserted by Tri-County.

The critical issue in this case is whether Tri-County is entitled to indemnification under the national agreement. This agreement provides:

Customer agrees to indemnify and hold Lessor, Owner, IDEALEASE, INC., and *all* Authorized Members harmless from and against [Emphasis added]:

A. Any claim or cause of action for death or injury to persons or loss or damage to property, arising out of or caused by the ownership, maintenance, use or operation of any Vehicle covered by this Agreement.

B. All liability for death of or injury to Customer, its employees, drivers, passengers or agents arising out of the ownership, maintenance, use or operation of any Vehicle covered by this Agreement.

The addendum modifies the indemnification clauses of the master agreement with the following language:

Unless such action is proved to be the direct responsibility or negligence of the Lessor . . .”¹

The majority places great emphasis on the word “all” in the above referenced provision, relevant to whether Tri-County is an “Authorized Member.” The majority reasons that because Tri-County was identified in a 1994 document as an “Authorized Member” in relation to certain vehicles, Tri-County must be entitled to indemnification regardless of whether the vehicle involved in the underlying action was one of the vehicles that gave rise to Tri-County’s status of “Authorized Member.”

I reject the implicit conclusion of the majority that once Tri-County was identified as an Authorized Member it would always be an Authorized Member for purposes of indemnification. The national agreement is silent as to the meaning of Authorized Member. The 1994 document relied upon by the majority is incorporated into the national agreement and is referred to as “Schedule A.” This document identifies five vehicles and states in the bottom corner that Tri-County is an “Authorized Member for vehicles shown on this Schedule A.” The plain language of this document indicates that Tri-County’s authorized membership is limited to the five vehicles identified in Schedule A. Because the accident giving rise to Tri-County’s claim of indemnification did not involve one of the five vehicles identified in the 1994 Schedule A, Tri-County was not, by definition, an Authorized Member. Therefore, Tri-County is not entitled to indemnification.

/s/ Brian K. Zahra

¹ I reject defendant’s claim that the use of ellipsis after the word “Lessor” in paragraph 10 of the addendum supports the conclusion that the indemnification provision should be read to preclude indemnification where such action is proved to be the direct responsibility of not only the lessor, but also the owner, Idealease, Inc., and all Authorized Members. Such a reading would be inconsistent with the manner in which ellipses are used in paragraphs 5(F), 5(N) and 9(B)(1) of the addendum.